55 N. E. 1093; Kramer *v.* Kramer, 181 N. Y. 477, 74 N. E. 474; Bruyn *v.* Russell, 52 Hun. 17, 4 N. Y. Supp. 784. The plaintiff through his own witness has explained the genesis of the promise, and consideration has been disproved. Neg. Instr. Law, § 54 (Consol. Laws, c. 38)."

Carriers—Ejection of Passenger—Failure to Pay Excess Fare.—In Louisville & N. R. Co. *v.* Harper, 83 So. 142, the Supreme Court of Alabama held that where the plaintiff boarded a train with a ticket to a certain station, and before arriving there informed the conductor that he had decided to go on to another station, and the conductor directed him to get off at the first station, and buy a ticket, and he got off, but could not get a ticket because the agent was not in the ticket office, and he could not find him, the carrier was liable for damages for ejecting him because he did not pay an excess fare chargeable in addition to the regular fare when the fare is paid in cash.

The court said: "Under the law the conductor in charge of the train, in the discharge of the duties of his employment, is vested with the power of the defendant company in the collection of fares from passengers, and to that end is its vice principal, and may subject said company to liability for his acts while he is so acting. Republic I. & S. Co. *v.* Self, 192 Ala. 403, 407, 68 So. 328, L. R. A. 1915F 516; A. G. S. R. R. Co. *v.* Baldwin, 113 Tenn. 409, 82 S. W. 487, 67 L. R. A. 340, 3 Ann. Cas. 916. Railroad conductors make reasonable arrangement as to passengers transported under their direction, and may inform passengers what will be required of them, and bind the company by such information so given, in the discharge of the duties of their employment. Wright *v.* Glens Falls, etc., R. R. Co., 24 App. Div. 617, 618, 48 N. Y. Supp. 1026; Chicago, etc., R. R. Co. *v.* Burns (Tex. Civ. App.), 104 S. W. 1081, 1083; Dwinelle *v.* N. Y. C. & H. R. R. Co., 120 N. Y. 117, 127, 24 N. 319, 8 L. R. A. 224, 17 Am. St. Rep. 611. * * *"

"It was not necessary that the fare be paid to establish the relation of carrier and passenger, for if the plaintiff had entered the car in good faith, with the implied invitation or consent of the compay's agent, to take passage and with the intention of paying, the relationship is established. B. R. L. & P. Co. *v.* Bynum, 139 Ala. 389, 395, 36 So. 736; N. B. R. R. Co. *v.* Liddicoat, 99 Ala. 545, 549, 13 So. 18. In L. & N. R. R. Co. *v.* Hine, 121 Ala. 234, 237, 238, 25 So. 857, 859, the court said:

"'It does not appear from the complaint, however, that there was any rule of the defendant which required absolutely one who has actually obtained such permission to himself exhibit to the conductor the written evidence of such permission. In the absence of

notice to the plaintiff of such absolute requirement, he had a right to assume that the defendant's ticket and telegraphing agent knew his duties and would perform them. If, therefore, as appears from the complaint, the plaintiff was induced to board the train and begin the journey disarmed of the written permit by the conduct of the defendant's agent and in reliancce upon his advice and his undertaking to give the permit to the conductor, the defendant could not rightfully eject him from the train for failure to exhibit a written permit to the conductor. The carrier cannot shield itself from the consequences of misconduct or mistake on the part of one of its agents, acting within the scope of his duties, which has naturally betrayed another of its agents into the final act of injury to the passenger.'

"A condition precedent to the enforcement of a regulation exacting extra charges in case of failure to purchase a ticket is that the carrier afford the passenger a reasonable opportunity to purchase a ticket; not so affording, such passenger is entitled to have transportation on payment (or tender for acceptance to the conductor in charge of the train) of the regular fare for his transportation. Kennedy *v.* B. R., L. & P. Co.,138 Ala. 225, 230, 35 South. 108; Evans *v.* M. & C. R. R. Co., 56 Ala. 246, 28 Am. Rep. 771; Kozminsky *v.* Oregon S. L. R. R. Co., 36 Utah, 454, 104 Pac. 570, 24 L. R. A. (N. S,) notes 758-761."

Injunction—Nuisance Caused by Smoke.—In Holman *v.* Athens Empire Laundry Co., 100 S. E. 207, the Supreme Court of Georgia held that when an injunction was asked to restrain defendant from using "such coal as throws out a black, dense smoke," and the evidence justified a finding that the use of coke, instead of soft coal, was more convenient and practical, injunctive relief should be granted.

The court said: "Smoke is not per se a nuisance (St. Paul *v.* Gilfillan, 36 Minn. 298, 31 N. W. 49). To constitute smoke a nuisance, according to the authorities, it must be such as to produce a visible, tangible and appreciable injury to property, or such as to render it specially uncomfortable or inconvenient, or to materially interfere with the ordinary comfort of human existence. That the business itself is offensive to others, or that property in the neighborhood of such business is necessarily adversely affected thereby, or that persons of fastidious taste would prefer its removal is not sufficient.

"Applying the foregoing principles to the case in hand, the defendant may make use of its property and carry on any business not per se a nuisance that produces no unnecessary, unreasonable, unusual or extraordinary impregnation of the air with smoke or soot,